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March 6, 2006

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: CC Docket No. 96-45 Federal-State Joint Board on Universal Service
EX PARTE PRESENTATION

Dear Ms. Dortch:

This letter is submitted on behalf of TracFone Wireless, Inc. (TracFone) in response to the ex parte letter submitted by the Ad Hoc Telecommunications Users Committee (AHTUC) dated March 1, 2006.

AHTUC -- a charter member of CoSUS (the Coalition for Sustainable Universal Service) -- has been a long-time proponent of replacing the current revenues-based universal service contribution methodology with some sort of a flat system -- either a methodology based on network connections (*e.g.*, the original, but long discredited CoSUS plan), or the more currently in vogue working telephone numbers-based plan. AHTUC is comprised of several of the nation's largest corporate users of telecommunications service and it represents the interests of corporate users -- not the interests of residential consumers in general, or low volume low income residential consumers in particular. For that reason alone, AHTUC's advice to the Commission on how best to protect the interests of low income subscribers is inherently suspect.

According to AHTUC, low income subscribers would fare better under a numbers-based assessment methodology than they do under the current revenues-based scheme.[1] Every advocacy group which has participated in this proceeding and which represents the interests of low income consumers has disagreed with that conclusion.[2] AHTUC seems to be asking the Commission to ignore the voices of the many thousands of consumers who would be harmed by a numbers-based proposal and instead, defer to AHTUC and its corporate members to enable the Commission to determine what is best for those consumers.

AHTUC supports its improbable supposition by noting that low income consumers who qualify for the Lifeline program would be exempt from USF payments under a numbers-based plan. AHTUC ignores several important facts. First, based upon Commission data, less than thirty-four percent of Lifeline-eligible low income subscribers actually participate in the Lifeline program.[3] The remaining sixty-six percent would not be exempted from a flat charge of $1.00 or more on each working telephone number, irrespective of whether they make few, if any, interstate calls. Second, AHTUC disregards the fact that many low income consumers, including Lifeline customers, find it necessary to obtain wireless service in addition to their wireline local exchange service. Since the Commission's Lifeline rules limit Lifeline-eligible customers to one subsidized line per household, any additional telephone numbers assigned to those customers (including wireless numbers) would be subject to per number USF fees, irrespective of whether those services associated with those numbers are used for any interstate calling.

Next, AHTUC predicts that Subscriber Line Charges are likely to increase and that the resulting reduction in long distance rates will further erode interstate toll revenues. Whether, and to what extent, Subscriber Line Charges will increase is entirely speculative. If, as AHTUC suggests, long distance rates will decrease, such reductions would be expected to stimulate demand. That is

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[1] Letter from James S. Blaszak, counsel for AHTUC, to Marlene H. Dortch dated March 1, 2006, at 1-2 (AHTUC Letter).

[2] See, *e.g.*, letter from David Certner, Director, Federal Affairs American Association of Retired Persons (AARP), filed April 28, 2003 ("Under the proposed funding mechanism, these low volume long distance callers would be required to pay the bulk of the funding for Universal Service. Based on comments filed with the Commission during its review of low-volume long-distance users in 1999, some 44% of consumers fall into this category."); letter from James A. Bachtell on behalf of Consumers Union, Texas Office of Public Utility Counsel, Consumer Federation of America, Appalachian People's Action Coalition, Center for Digital Democracy, Edgemont Neighborhood Coalition and Migrant Legal Action Program, filed October 31, 2002 ("Even a $1 connection charge, which CoSUS acknowledges will increase, is substantially more than what most low-income customers currently pay."). In addition, more than 500,000 consumers, many of whom are low income, have sent letters to the Commission opposing proposals to impose a numbers-based USF contribution methodology because it would significantly increase the USF funding burden on those consumers.

[3] Lifeline and Link-Up (*Report and Order and Further Notice of Proposed Rulemaking),* 19 FCC Rcd 8302 (2004), at Appendix K - Section 1: Baseline Information Table 1.A. Baseline Lifeline Subscription Information (Year 2002).

elementary economics. In competitive markets, vendors do not reduce their prices unless they expect to increase demand for their products or services. Since 2002, AHTUC and its CoSUS brethren have continued to assert that interstate long distance is declining and that it is in a "death spiral." If there is such a pronounced decline in demand for that service, it seems highly improbable that carriers will drop their prices in response to access charge reductions unless they expect to stimulate demand for the service.

AHTUC chastises the Keep USF Fair Coalition's February 27, 2006 report which states that consumers' payments to the USF are lower today than they were in 2002. Notwithstanding AHTUC's protestations to the contrary, that statement is irrefutably correct. Prior to the Commission's 2002 order prohibiting carrier mark-ups of USF contribution pass-through charges,[4] carriers routinely imposed USF pass-through charges of 11, 12, 13 percent or greater, notwithstanding the fact that the contribution factor never exceeded 7.28 percent during 2002.[5] As a result of the Commission's prudent and responsible decision to prohibit mark-ups of USF pass-through charges, no consumer today is being charged more than 10.2 percent of its interstate usage amounts -- well below what consumers were being charged more than three years ago.

AHTUC dismisses these facts by claiming that the long distance mark-ups were "absolutely unrelated to the USF mechanism whatsoever . . . ."[6] AHTUC is wrong! The Commission's prohibition of USF mark-ups is directly related to the USF mechanism. Consumers do not care about USF contribution factors; consumers care about what they are required to pay to support the USF. When the Commission terminated the practice of certain carriers using the USF as a profit center it immediately reduced the monthly USF funding burden on the consuming public -- or at least that portion of the consuming public which utilized interstate calling services each month. By prohibiting mark-ups, the Commission kept the funding levels constant but immediately reduced the burden which USF funding placed on consumers. This was clearly the Commission's intent and the action was taken as part of the Commission's oversight of the USF contribution process. Indeed, in prohibiting mark-ups on USF pass-through charges, the Commission explained its purpose as follows:

> The elimination of mark-ups in carrier universal service line items will also alleviate end-user confusion regarding the universal service line item. Specifically, the amount of a carrier's federal universal service line item will exceed the relevant interstate telecommunications portion of the bill times the relevant contribution factor. This result should eliminate a significant portion of the

[4] Federal-State Joint Board, *et al* (*Report and Order and Second Further Notice of Proposed Rulemaking*), 17 FCC Rcd 24952 (2002) ("USF Contribution Order").

[5] According to data compiled by TNS Telecoms for TracFone, one major carrier -- AT&T -- USF pass through charges averaged between 11.2% and 11.7% during 2002 despite the fact that the contribution factor ranged between 6.81% and 7.28% during that period. A table showing TNS Telecom's calculations is attached to this letter.

[6] AHTUC Letter at 3.

> consumer frustration and confusion pertaining to universal service line items.[7]

The Commission's well-considered decision to prohibit mark-ups of USF pass-through charges has had the desired effect since long distance consumers today are paying less in USF charges than they were in 2002. Contrary to AHTUC's unsupported and unsupportable proposition, the Commission's elimination of mark-ups is inextricably related to the USF funding mechanism itself.

AHTUC speaks for the interests of its members, not for American consumers. Those who do speak on behalf of the consuming public have been overwhelming in the opposition to a numbers-based USF contribution methodology since it would shift much of the USF funding burden from major carriers and from AHTUC members onto the shoulders of residential consumers, including low income consumers, who make few, if any, interstate calls. If the Commission elects to implement a numbers-based contribution methodology notwithstanding those concerns, then it should take all steps necessary to ensure that low volume, low income consumers, and those that serve low volume, low income consumers, are not forced to bear a disproportionate share of the USF funding burden.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically in the above-captioned docket. If there are questions regarding this letter, please communicate directly with undersigned counsel for TracFone.

Respectfully submitted,

Mitchell F. Brecher
Counsel for TracFone Wireless, Inc.

Attachment

cc: Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Mr. Daniel Gonzalez
Mr. Ian Dillner
Ms. Jessica Rosenworcel
Mr. Scott Bergmann
Mr. Aaron Goldberger
Mr. Thomas Navin

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[7] USF Contribution Order, at ¶ 50.

Ms. Narda Jones
Ms. Cathy Carpino

AT&T Universal Service Fund Rate, 1Q2002 to 4Q2005, Nation

Quarter	Bill Count	Total USF Charges	Total LD Charges	Average LD Bill	Average USF Charge	Calculated USF Rate	FCC USF Rate
1Q2002	1354	$ 2,452.76	$ 21,470.26	$ 15.86	$ 1.81	11.4%	6.81%
2Q2002	1219	$ 2,086.93	$ 17,840.97	$ 14.64	$ 1.71	11.7%	7.28%
3Q2002	1064	$ 1,853.14	$ 16,605.45	$ 15.61	$ 1.74	11.2%	7.28%
4Q2002	963	$ 1,566.20	$ 13,659.68	$ 14.18	$ 1.63	11.5%	7.28%
1Q2003	1061	$ 1,779.81	$ 15,637.09	$ 14.74	$ 1.68	11.4%	7.28%
2Q2003	829	$ 1,027.22	$ 10,900.98	$ 13.15	$ 1.24	9.4%	9.00%
3Q2003	694	$ 931.98	$ 9,703.79	$ 13.98	$ 1.34	9.6%	9.50%
4Q2003	594	$ 743.49	$ 8,067.64	$ 13.58	$ 1.25	9.2%	9.50%
1Q2004	665	$ 923.39	$ 10,677.05	$ 16.06	$ 1.39	8.6%	8.70%
2Q2004	527	$ 664.46	$ 7,346.72	$ 13.94	$ 1.26	9.0%	8.70%
3Q2004	468	$ 629.72	$ 7,190.17	$ 15.36	$ 1.35	8.8%	8.90%
4Q2004	342	$ 439.64	$ 4,908.72	$ 14.35	$ 1.29	9.0%	8.90%
1Q2005	258	$ 424.71	$ 4,073.51	$ 15.79	$ 1.65	10.4%	10.70%
2Q2005	321	$ 610.55	$ 5,624.04	$ 17.52	$ 1.90	10.9%	11.10%
3Q2005	296	$ 490.09	$ 4,869.16	$ 16.45	$ 1.66	10.1%	10.20%
4Q2005	211	$ 319.68	$ 3,198.14	$ 15.16	$ 1.52	10.0%	10.20%

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